

Overview of the Opioid Abatement Authority and Opioid Settlement Funds

Senate Finance and Appropriations Committee
Health and Human Resources Subcommittee

January 30, 2023

Key Points

1. Approx. \$1 billion in opioid settlement funds coming to Virginia over the next 16-18 years
2. Distribution and allowable uses determined by the settlement terms of each agreement, Virginia's statewide MOU, the OAA statute, and Virginia court orders.
3. Of the estimated \$1 billion total:
 - 30% will go directly to Virginia's cities and counties
 - 55% will go to the Opioid Abatement Authority
 - 15% will go to the Commonwealth and be available for appropriation
4. Risks to Virginia's ability to achieve maximum settlement funds include:
 - Use of funds for non-approved purposes
 - Changes to the OAA statute that create a conflict with MOU and/or court orders

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Opioid Litigation Involving States and State Subdivisions

- ✓ In late 2017 a federal judicial panel consolidated all federal opioid related litigation into a single multi-district litigation (MDL).
 - Has been described as the most complex civil case in US history.
- ✓ First two national agreements to emerge from this MDL court were:
 - “The Distributors” – McKesson, Cardinal Health, and Amerisource Bergen
 - Janssen Pharmaceuticals – subsidiary of Johnson & Johnson

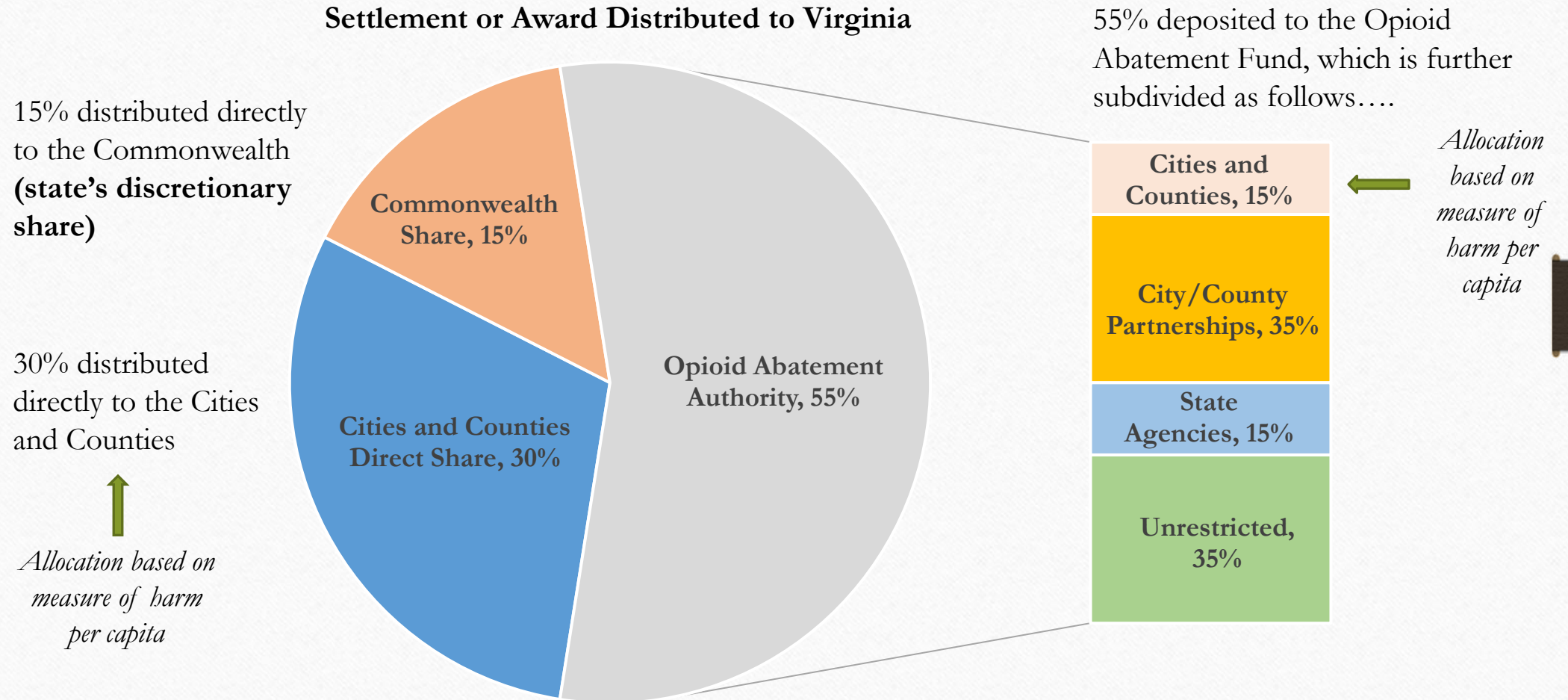
Virginia's Participation in these Settlements

- In late 2021-early 2022, the Virginia Attorney General's office worked with local attorneys and outside counsel representing localities, and with numerous associations, to encourage cities and counties to participate and drop individual suits.
 - ✓ Resulted in a signed MOU between all 133 cities/counties and the Commonwealth.
 - ✓ General Assembly passed a statute that closely mirrors the MOU.
 - ✓ The MOU and the statute specify that only cities, counties, and state agencies are eligible to receive financial support from the OAA.

Virginia's Participation in these Settlements

- ✓ Distributors and Janssen were finalized in Virginia by way of two separate but nearly identical state court orders issued in April 2022 (13th Judicial Circuit Court in Richmond)
- ✓ These court orders incorporate the national settlement documents, the state's allocation MOU, and the statute.
 - ✓ Any changes to the statute could cause the Commonwealth to be in violation of the MOU and the Court Orders

Virginia's Settlement Distribution Agreement



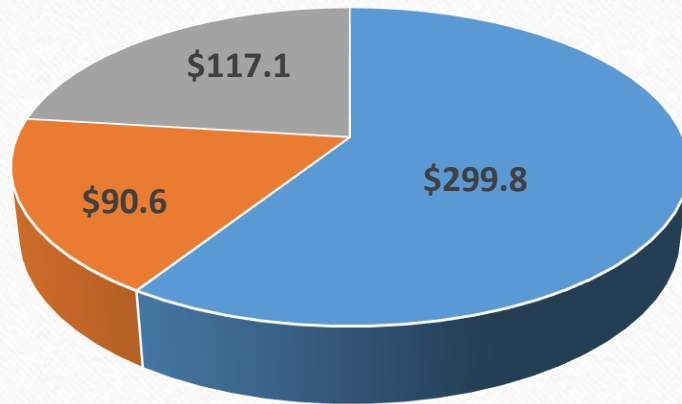
Estimated Settlement Distributions to Virginia

FY 2022 through FY 2039

Distributors and Janssen Settlements

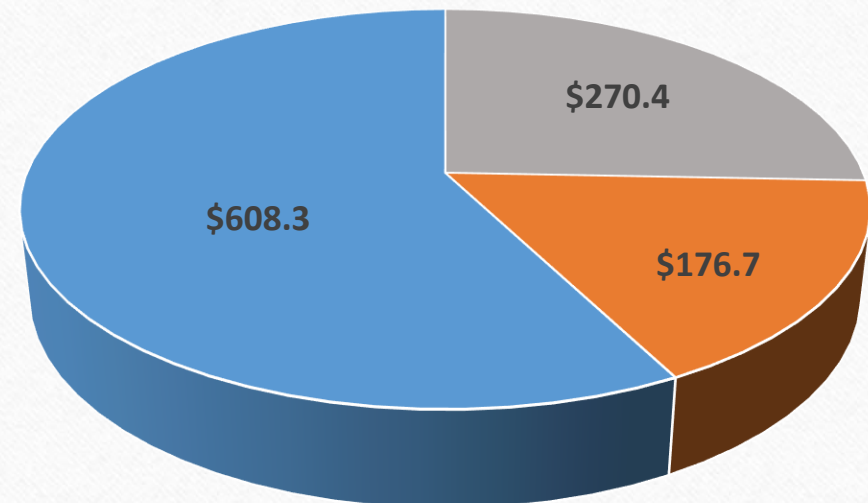
The total amount that may be distributed to Virginia for the **two current settlements is \$507.5 million**

\$ in Millions



Total Possible Settlement Payments

...and may increase to over \$1.0 billion including all settlements announced but not yet finalized.



■ Cities and Counties ■ Commonwealth ■ OAA

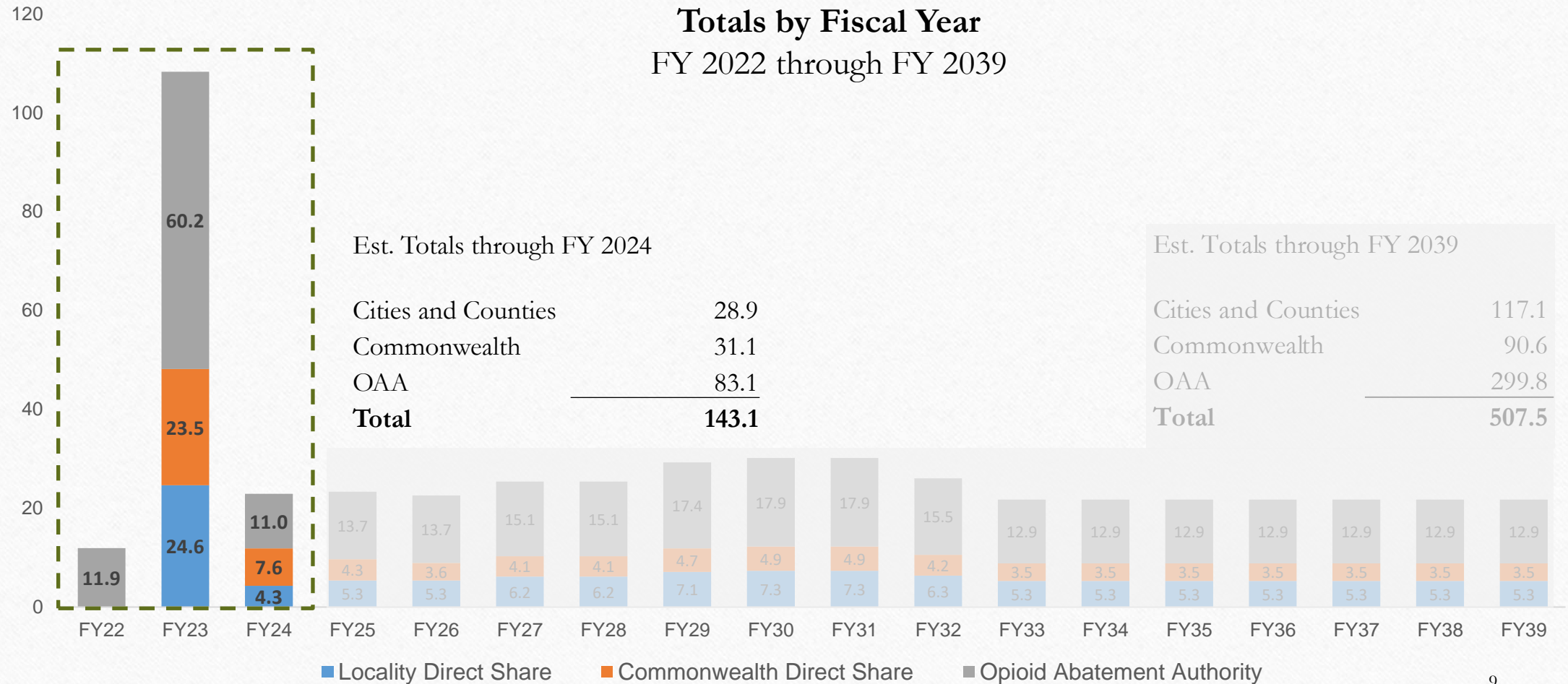
Estimated Settlement Distributions to Virginia

(Distributors and Janssen Settlements)

Totals by Fiscal Year

FY 2022 through FY 2039

\$ in Millions



Allowable Uses for Funds will be Different with each Settlement

- For the current settlements, Distributors and Janssen, all the funds are intended for “abatement” efforts – and certain percentages are required.

Distributors (McKesson, Cardinal, Amerisource Bergen)

- ✓ 85% statewide for abatement efforts
- ✓ 85% for each city or county that had been litigating prior to the settlement
- ✓ 100% for each city or county that had not been litigating

Janssen (Manufacturer, subsidiary of J&J)

- ✓ 86.5% statewide and for each city and county

- **ANY funds used for any purpose other than abatement must be reported to the settlement administrator, to the settling companies, and to the general public.**
- Localities may need to keep detailed records for how each dollar of each settlement is spent.

The Statutory Requirements on the use of OAA Funds Exceed the Requirements of the National Settlement Agreements

- 100% of the OAA's disbursements to cities, counties and state agencies must be spent on abatement efforts.
- There is no reimbursement of previous costs or supplanting allowed.
- No indirect charges allowed.
- Recipients must report outcomes to OAA on an annual basis and allow OAA to monitor the programs.
- Prioritizes grant awards consistent with statute.

Virginia's Statutory Structure and Priorities Align with Best Practices Recommended by National Organizations

- Spend money to save lives
- Use evidence to guide spending
- Invest in youth and family prevention
- Focus on racial equity
- Develop a fair and transparent process for deciding where to spend the funding

The OAA Can Make a Difference Beyond Distributing Funds

- Establishment a “big tent” for various state-level offices that deal with substance use disorders (prevention, harm reduction, treatment, criminal justice involvement, recovery supports).
- Build a “toolkit” of evidenced-based programs and organizations with a record of success.
- Provide a financial incentive for cities and counties to make the best use of the funds.
- Help cities and counties identify gaps and connect them with organizations and programs that can help address those needs.
- Carefully monitor the expenditures and outcomes.
- Focus on continuous improvement in the process.

Timeline for the OAA

- Grants Committee and Finance Committee formed
- “Listening Sessions” being held across the Commonwealth
- Released grant and distributions guidance to cities and counties on January 19
 - ✓ Simultaneously roll out technical assistance
- First round of awards by March/April time frame

For more information

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